IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1043 of 2007

Bharathi .. Petitioner

Vs

1. State of Tamil Nadu,
   rep. by its Secretary to Govt.,
   Home, Prohibition & Excise
   Dept., Fort St. George, Chennai.

2. The Commissioner of Police,
   Greater Chennai, Egmore, Chennai. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.S.Doraisamy

For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The petitioner, wife of the detenu, by name Umapathy, who was incarcerated at Central Prison, Puzhal, Chennai, pursuant to the order of detention dated 2.6.2007 passed by the second respondent in Memo No.233/BDFGISSV/2007 under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982) branding him as a Goonda, seeks a Writ of Habeas Corpus to quash the order of detention and to direct the respondents to produce the above said detenu before this Court and set him at liberty.

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2. On the basis of complaint lodged by one Muniya @ Muniyandi, who is undergoing trial in connection with Crime NO.1201 of 2004 on the file of E2 Royapettah Police Station, that on 24.4.2007 when he was proceeding for taking lunch along with other accused in the case, the detenu and his associates, came in an auto and chased one of the accused in the said case, namely, Veera @ Veeramani and indiscriminately cut him, creating terror and panic at the spot and caused the death of the said Veera @ Veeramani on the spot, a case was registered in Crime No.286 of 2007 on the file of B.1 North Beach Police Station for offences punishable under Sections 147, 148, 341 and 302 I.P.C. and subsequently, during the course of investigation, the detenu and his associates surrendered before the learned District Munsif cum Judicial Magistrate, Thiruvallore, who remanded them to judicial custody.

3. The second respondent, taking note of the above case as a ground case as well as two adverse cases in Crime No.320 of 2004 on the file of D.3 Ice House Police Station, registered for offences punishable under Sections 153, 292(a) I.P.C. and in Crime No.1573 of 2006 on the file of R.3 Ashok Nagar Police Station for offences punishable under Sections 147, 148, 341, 324 and 506(2) I.P.C., having satisfied that there is a compelling necessity to detain the detenu in order to prevent him from indulging in the activities which are prejudicial to the maintenance of public order, ordered his detention dubbing him as a Goonda.

4. The learned counsel for the petitioner assails the impugned order of detention on the ground of non-application of mind by the detaining authority as to the discrepancy between the remand extension order and the special report submitted by the sponsoring authority, viz. while the remand extension order discloses that the accused were produced before the Court through Video Conference, in the special report it is stated that the accused were produced in Court and therefore, the said discrepancy vitiates the order of detention.

5. On perusal of the paper book placed before us, we find that there is a glaring discrepancy as rightly pointed out by the learned counsel for the petitioner. In the remand extension order dated 25.5.2007, found at page 243 of the paper book, it is clearly stated that the accused were produced through video conference and the remand is extended till 8.6.2007, but whereas in the special report submitted by the sponsoring authority, found at page 246 of the paper book, it is stated that the accused were produced in Court on 25.5.2007 and their remand was extended till 8.6.2007, which discrepancy creates a doubt as to whether the accused were produced before the Court in person or through video conference and the detaining authority, having not applied his mind on this aspect, we are of the considered opinion that the impugned order of detention vitiates on this ground.

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In the result, the impugned order of detention is quashed and the Habeas Corpus Petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sra

To

1. The Secretary,
   Government of Tamil Nadu,
   Home, Prohibition & Excise
    Dept., Fort St. George, Chennai.

2. The Commissioner of Police,
   Greater Chennai, Egmore, Chennai.

3. The Superintendent,
   Central Prison, Puzhal, Chennai.

4. The Public Prosecutor,
   High Court, Madras.

5. The Joint Secretary to Government
Public Law and order Department,
Fort St. George, Chennai-9.

1 cc to Mr.S. Doraisamy, Advocate, Sr. 67347

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